IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17080 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SOMABHAI BHAGWANBHAI GOHIL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MEHUL H RATHOD for Petitioner(s) : 1,
MRS FALGUNI PATEL AGP for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2,
MR.D O.PATHAK for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/12/2005

ORAL JUDGMENT

1. In the present petition, the petitioner who is an elected Sarpanch of Dethan Gram Panchayat, Taluka:Karjan, District:Baroda has challenged an order dated 8th October,

2004 passed by the District Development Officer, by which the petitioner was suspended from the position of Sarpanch. The petitioner has also challenged the appellate order passed by the Additional Development Commissioner on 29/11/2004 by which the appeal of the petitioner against the order passed by the District Development Officer came to be rejected.

2. Few facts leading to the present petition can be noted at this stage.

2.1 The petitioner was elected as a Sarpanch of Dethan Gram Panchayat, election for which took place in March, 2003. A criminal complaint came to be lodged against the petitioner and some other persons on 18/3/2003 involving offences punishable u/s 143, 147, 148, 149, 324, 323, 504 and 506 of Indian Penal Code as well as Section 135 of Bombay Police Act.

2.2 From the complaint which is produced on record, it can be seen that broad allegations made in the complaint are that the petitioner and some other persons had gone to the residence of the complainant in the evening on 18/3/2003 and had picked up a quarrel about tying of

cattles in the panchayat land and in the ensuing fight they had beaten up complainant and some other persons with stick and pipe and had used foul language saying that these persons had not supported the petitioner in the election to the post of Sarpanch. It may be noted that in the complaint there is no specific allegation against the petitioner of having given a blow to anyone either with the stick or pipe or even otherwise.

2.3 On account of filing the said criminal complaint against the petitioner a show cause notice dated 17/4/2003 came to be issued by the District Development Officer why he should not be suspended from the position of Sarpanch. In the show cause notice it was indicated that the petitioner is involved in offences involving moral turpitude. He was, therefore, asked to make a representation within a period of 10 days why he should not be suspended in exercise of powers u/s 59(1) of the Gujarat Panchayats Act, 1993 (herein after referred to as the said Act.)

2.4 The petitioner replied to the show cause notice vide his representation dated 2/5/2003. It was indicated that the complaint has been filed on account of political

rivalry and that he has not committed any offence. In any case allegations contained in the complaint would not amount to offences involving moral turpitude.

2.5 District Development Officer however passed impugned order dated 8/10/2004 suspending petitioner from the position of Sarpanch holding that the petitioner is involved in a criminal case of offences involving moral turpitude. The petitioner unsuccessfully challenged the order passed by the District Development Officer and his appeal came to be rejected by the Additional Development Commissioner on 29/11/2004.

2.6 The petitioner has challenged the above mentioned orders passed by the authorities below by which he was suspended as a Sarpanch.

3. Learned advocate Shri Rathod appearing for the petitioner submitted that the orders under challenge are required to be quashed and set aside. He contended that the petitioner is falsely involved in the criminal case by his political rivals and that he has not committed any offence. He contended that in any case the allegations made against the petitioner, even if taken on the face

value, would not constitute offence involving moral turpitude. He further pointed out that the Additional Development Commissioner in case of the present petitioner has held that the allegations amount to offences involving moral turpitude whereas under identical circumstances very same authority while allowing appeal filed by another Sarpanch by order dated 26/6/2003 found that such allegations would not constitute offences involving moral turpitude. It was contended that respondent no.3 herein who is actively pursuing the case of suspension of the petitioner was the unsuccessful candidate at the election of the panchayat. He submitted that respondent no.3 is a disgruntled element and is trying to take advantage of false complaint filed against the petitioner.

3.1 Reliance was placed on the decision of learned Single Judge of this Court in the case of **Narabhai Veljibhai Chaudhary vs. R.S.Vaghela & Ors. Reported in 1997(1) GLR page 599**, wherein the learned Single Judge had made following observations:

> "Thus, Sarpanch cannot be suspended just on institution of Criminal Case. Whether the act constitute an offence of moral turpitude, there cannot be a straitjacket formula. It depends on

> various factors including the manner and circumstances in which the offence alleged to have been committed. The rule of suspension of a person holding public office is based on a public policy to maintain purity in from holding public office. However, this power in current aggressive competitive politics must be exercised with great circumspection. While criminalisation in public life is not unknown, the false implication has also become hazards of public life. This has put more pressure on the Judiciary to scrutinise such cases with more care and caution. It is true that it will not be for the Court to enter into the merits of the case, but still it is desirable to undertake brief scrutiny of the facts to rule out any chance of false implication."

3.2 Reliance was also placed on the decision of learned Single Judge in the case of **Bikhumiya Sarfumiya Malek vs. District Development Officer, Mehsana reported in 1999(3) GLR page 2693**, wherein ratio laid down in the case of Narabhai V. Chaudhary vs. R.S.Vaghela (supra) was followed and the learned Judge was pleased to come to the conclusion that mere filing of a charge sheet against a Sarpanch would not be sufficient to permit the authorities to remove or suspend the Sarpanch and there must be an objective scrutiny of the allegation to ascertain that there was an element of moral turpitude. In paragraph 9 of the said decision, it was observed that in such matters, when the tenure of the elected office bearer is sought to be interfered with, the authority, who is charged under the Act to exercise the power, has

to take care and scrutinise the allegation with great care and caution. It was further observed that in some cases the parties may, level allegations so as to involve the elected person in a criminal case with allegations involving criminal liability and may go to the extent of levelling the allegations involving moral turpitude so as to settle their score and, therefore, such orders could not be passed in a casual manner.

3.3 Reliance was also placed on the decision of **Thakorbhai Bhagabhai Vs. D.D.O., Surat & Anr. Reported in 1980 GLR page 966**. In the said decision, the learned Judge was pleased to observe in para 7 that the offence which the petitioner alleged to have committed were u/s 323, 324, 149 and 147 of the Indian Penal Code read with Section 135 of the Bombay Police Act. It was observed that the Court does not see how it can be said that the alleged offences were offences involving moral turpitude in the sense that the alleged acts can be said to be a conduct which is contrary to honesty or good morals or is unethical, since, at the most, it was an incident of some scuffle between the petitioner and other persons alleged to be involved in the incident. By no stretch of imagination, without violence to the language it can be

said that this act imputed to the petitioner, assuming it to be true, would constitute a conduct which may be labelled as dishonest or immoral or unethical. In no case, it can be said that the alleged conduct of the petitioner was not behoving to the duties which he was to perform as a Sarpanch. In the circumstances, therefore, the condition precedent for the exercise of the power is absent and the impugned order of suspension as confirmed in appeal should be quashed and set aside.

4. On the other hand learned advocate Shri Munshaw appearing for the District Development Officer sought to support the order passed against the petitioner. It was contended that not only complaint was filed against the petitioner involving above mentioned offences punishable under various provisions of Indian Penal Code, a charge sheet pursuant to the said complaint was also filed before the Criminal Court. He, therefore, submitted that the petition should be rejected.

5. Learned advocate Shri Pathak for respondent no.3 at whose instance apparently the proceedings for suspending the petitioner seem to have been taken, strongly urged that no interference is called for in the orders passed

by the authorities below. He contended that the authorities had acted not merely on filing of the complaint but also on the basis of charge sheet. It was prima-facie held that the petitioner was involved in commission of the said offences. He further submitted that suspension is a temporary measure and does not amount to any punishment. If the petitioner is ultimately acquitted of the charges by a competent Court, he would be restored in his original position. He further submitted that the allegations against the petitioner would constitute offences involving moral turpitude. He, therefore, submitted that the petition should be rejected.

5.1 Reliance was placed on the decision of Division Bench of this Court in the case of **Abhuji Karshaji Thakore vs. Thakore Jitaben Manchaji passed on 5/5/2003 in Letters Patent Appeal No. 179 of 2003 in Special Civil Application No. 516 of 2003 with Civil Application No. 1221 of 2003**. In the said decision however the Division Bench of this Court was considering legality of an interim order passed by the learned Single Judge staying the suspension of a Sarpanch who was involved in a criminal case. The allegations against the Sarpanch in

the above mentioned case included those of offences punishable under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989. It was in that back ground that the Division Bench found that looking to the object with which the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 is enacted by the Parliament and the strict provisions regarding bail as well as punishment would indicate that institution of criminal proceedings in respect of an offence punishable under the said Act will have to be regarded as one involving moral turpitude. In the back ground of these observations Division Bench was pleased to set aside the mandatory interim relief granted by the learned Single Judge. In view of the fact that in the present case no allegations have been made against the petitioner of having committed offences under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, the ratio laid down in the above mentioned case is not applicable to the facts of the present case.

6. Learned AGP Mrs. Falugni Patel supported the orders passed by the authorities.

7. Having heard the learned advocates appearing for the parties, it would appear that the sole ground on which the petitioner was suspended from the position of Sarpanch was that he is involved in a criminal case wherein allegations are such which would constitute offences involving moral turpitude. In this regard we may notice the provisions of Section 59(1) of the said Act.

Section 59(1) of the said Act reads as follows:

> “59.(1) The District Development Officer may suspend from office the Sarpanch or the Upa-Sarpanch of a village panchayat against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted or who has been detained in a prison during trial for any offence or who is undergoing such sentence of imprisonment as would not disqualify him from continuing as a member of the panchayat under section 30 or who has been detained under any law relating to preventive detention for the time being in force.”

7.1 From the provisions of Sub Section (1) of Section 59 it can be seen that the District Development Officer has power to suspend Sarpanch or Upa-Sarpanch of a village panchayat against whom criminal proceedings in respect of offences involving moral turpitude have been instituted or who has been detained in a trial for any offence or

who is undergoing such sentence or imprisonment as would not disqualify him from continuing as a member of the panchayat u/s 30 or who has been detained under any law relating to preventive detention for the time being in force. In the present case the only ground sought to be pressed in service for suspending the petitioner is that against him criminal proceedings in respect of offences involving moral turpitude have been instituted. The moot question, therefore, is whether the allegations made against the petitioner would amount to offence involving moral turpitude.

7.2 I have briefly outlined the allegations made against the petitioner. The complaint refers that there was some scuffle between the group in which the petitioner was also a party with the complainant and his neighbour. In the ensuing scuffle there were blows given by some persons but the petitioner is not attributed to have played any active role in the entire incident. In any case it is difficult to categorise the allegations made against the petitioner as being one constituting offence involving moral turpitude. In somewhat similar circumstances, as noted earlier in the decision of **Thakorbhai Bhagabhai Vs. D.D.O., Surat & Anr. (supra),**

learned Single Judge of this Court found that such allegations would not amount to offence involving moral turpitude.

7.3 In the decision of Narabhai V. Chaudhary vs. R.S.Vaghela (supra), learned Single Judge of this Court highlighted the requirement of acting with caution and circumspection when allegations of criminal involvement are made against a Sarpanch and is sought to be eased out of the office. It was observed that the judiciary should scrutinise such case with care and caution. Though it will not be for the Court to enter into the merits of the case but still it is desirable to rule out any chance of false implication.

7.4 In case of **Bikhumiya Sarfumiya Malek vs. District Development Officer, Mehsana (supra)** learned Single Judge of this Court highlighted the requirement of examining such situation with care and caution since possibility of rival parties filing false complaints cannot be ruled out.

8. In the decision of Pawan Kumar v. State of Haryana and Anr. Reported in AIR 1996 SC 3300, the Hon'ble

Supreme Court observed that “moral turpitude” is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. In paragraph 12 thereof following observations were made:

> “12. “Moral turpitude” is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. The Government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on February 2, 1973 (Annexure E in the Paper Book), accepting the recommendations of the Government of India, that ex-convicts who were convicted for offences involving moral turpitude should not, however, be taken in Government service. A list of offences which were considered involving moral turpitude was prepared for information and guidance in that connection. Significantly Section 294, I.P.C., is not found enlisted in the list of offences constituting moral turpitude. Later, on further consideration, the Government of Haryana on 17/26th March, 1975 explained the policy decision of February 2, 1973 and decided to modify the earlier decision by streamlining determination of moral turpitude as follows:
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> “.....The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not:
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> (1)whether the act leading to a conviction was such as could shock the moral conscience of society in general,
> (2)whether the motive which led to the act was a base one,
> (3)whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who

was to be looked down upon by the society."

Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offence which are not included in it but which in certain situations and circumstances may involve moral turpitude."

Section 294, I.P.C. Still remains out of the list. Thus, the conviction of the appellant under Section 294,I.P.C on its own would not involve moral turpitude depriving him the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirement of the policy decision above-quoted."

9. In the present case, I find that neither the District Development Officer nor the Additional Development Commissioner has adverted to the aspect whether the allegations made against the petitioner would amount to offences involving moral turpitude. Mechanically both the authorities came to the conclusion that the petitioner is involved in offences involving moral turpitude. Mere involvement in offence punishable u/s 323, 324, 504 and 506 of Indian Penal Code ipso facto would not constitute offence involve moral turpitude. Without there being anything additional in the complaint; *per se* such offence cannot be categorised

as one involving moral turpitude. In that view of the matter it would be necessary for the authorities to examine the nature of allegations made before concluding whether the offences are such involving moral turpitude. In the present case the allegations against the petitioner are of having entered into some fight with some of the residents of the village. There is no element of unethical behaviour of dishonest or immortal acts. Charges even if proved, would not amount to conduct which can be described as inherently base, vile or depraved. Having thus examined the allegations made against the petitioner in the complaint, I find that by no stretch of imagination it can be said that he is involved in offences involving moral turpitude. Mere filing of the complaint was therefore not sufficient to suspend the petitioner.

10. In the result, the orders passed by the authorities are required to be and are hereby quashed and set aside. Rule is made absolute accordingly. No order as to costs.

(Akil Kureshi, J.)

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